

**BINDING PRIVATE RULING: BPR 342**

DATE: 30 April 2020

**ACT : INCOME TAX ACT 58 OF 1962 (the Act)**  
**SECTION : SECTIONS 1(1) – DEFINITION OF “GROSS INCOME”, 25B(2A) AND (2B), 26A AND 56(1)(g)(ii) OF THE ACT AND PARAGRAH 80 OF THE EIGHTH SCHEDULE TO THE ACT**  
**SUBJECT : DONATION BY A RESIDENT TO A FOREIGN TRUST OF PROPERTY RECEIVED FROM ANOTHER FOREIGN TRUST**

***Preamble***

This binding private ruling is published by consent of the applicant(s) to which it has been issued. It is binding as between SARS, the applicant, and any co-applicant only and published for general information. It does not constitute a practice generally prevailing.

**1. Summary**

This ruling determines the income tax consequences and the application of the attribution rules of a distribution by a non-resident discretionary trust of an award to a resident beneficiary and the subsequent donation by the resident of the award to another non-resident trust.

**2. Relevant tax laws**

In this ruling references to sections and paragraphs are to sections of the Act and paragraphs of the Eighth Schedule to the Act applicable as at 3 December 2019. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the Act.

This is a ruling on the interpretation and application of –

- section 1(1) – definition of “gross income”;
- section 25B(2A) and (2B);
- section 26A;
- section 56(1)(g)(ii); and
- paragraph 80.

**3. Parties to the proposed transaction**

The applicant: A resident natural person

Trust A: A discretionary trust resident in Country X

Trust B: A discretionary trust to be settled by the applicant in Country Y

#### **4. Description of the proposed transaction**

The applicant's son settled trust A in 2012. The beneficiaries on the date of settlement were the applicant's son, the applicant's daughter-in-law, as well as any children or grandchildren of the applicant's son and such other persons or class of persons or any charitable institution which the trustees may add under the trust deed. The applicant was not a beneficiary from when the trust was settled, but was added as a beneficiary in 2019.

Trust A will make an award out of its capital to the applicant in an amount equal to the sum of (a) the settled capital of the trust, and (b) the excess of the market values of the assets over their costs, less (c) the liabilities of the trust, but without awarding the assets or an interest in the assets themselves. The award will be credited to a loan account in favour of the applicant in the books of Trust A. The applicant will donate the subject matter of the award to Trust B.

#### **5. Conditions and assumptions**

This binding private ruling is not subject to any additional conditions and assumptions.

#### **6. Ruling**

The ruling made in connection with the proposed transaction is as follows:

- a) The award by Trust A will not constitute "gross income" as defined in section 1(1) for the applicant, as it will constitute a receipt of a capital nature.
- b) In respect of the award of the amount by Trust A to the applicant, no amount must be included in the taxable income of the applicant in terms of section 26A read with the Eighth Schedule, as the applicant will not have disposed of any asset.
- c) In respect of the donation by the applicant to Trust B, no amount must be included in the taxable income of the applicant in terms of section 26A read with the Eighth Schedule, as the disposal of the applicant's right to receive the award will not result in any capital gain, as the market value of the claim will be equal to its base cost.
- d) Section 25B(2A), read with section 25B(2B), will not be of application in relation to the award to the applicant.
- e) No asset of Trust A will have been disposed of, nor will any asset or right to any asset have been vested in the applicant, so that neither paragraph 80(1) nor paragraph 80(2) will be of application with regard to the award made to the applicant.
- f) Paragraph 80(3), read with paragraph 80(4), will not be of application in relation to the award made to the applicant.
- g) The donation by the applicant to Trust B will be exempt from donations tax under section 56(1)(g)(ii).

**7. Period for which this ruling is valid**

This binding private ruling is valid in the year of assessment ending 29 February 2020.

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